Mr. Chairman, Members of the Committee, my name is Mallory Duncan. I am testifying today on behalf of the National Retail Federation (NRF), where I serve as Senior Vice President and General Counsel. By way of background, the NRF is the world's largest retail trade association with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet and independent stores. NRF members represent an industry that encompasses more than 1.4 million U.S. retail establishments employs more than 23 million people—about 1 in 5 American workers—and registered 2002 sales of $3.6 trillion. NRF's international members operate stores in more than 50 nations. In its role as the retail industry's umbrella group, NRF also represents 32 national and 50 state associations in the U.S. We greatly appreciate this opportunity to present our views on HR 2622, the "Fair and Accurate Credit Transactions Act of 2003", which is essential to the continued vitality of the retail industry.

Before I address the policy areas covered in the bill, I would like to preface my discussion with a brief illustration of the credit underwriting process. The concept of credit underwriting, or the analysis of economic risk on which a decision to lend money is based, has received repeated mention by everyone on all sides of the debate, but at no point have we really stopped to talk about what that means. This is essential, for it is the seven preemptions currently contained in the Fair Credit Reporting Act (FCRA) that are the underpinnings of the modern credit granting system. If we have a clear understanding of the underwriting process, it is much easier to analyze the vital role of the policies contained in the FCRA.

The example attached to my testimony consists of two simple revolving loan portfolios, each containing 100 loans of $1000 apiece, and each paid off within a year. One portfolio has an interest rate of five percent, the other a rate of 18 percent.

If one loan in the five percent portfolio were to immediately default (whether because of identity theft, consumer bankruptcy, or poor judgment on the part of the lender), it would take the interest payments from 41 performing loans to compensate for that default. The lender can, if it has enough capital, make 41 new loans and hope that they all perform, or the lender can live with a much lower rate of return. If instead as few as three borrowers default, the lender is completely underwater – and will lose money - even before facing the expense of managing 97 other loans.

If one loan in the 18 percent portfolio defaults, it takes the interest from 12.11 performing loans to compensate for that one default. Even if the lender gets it exactly right 92% of the time, no matter how well those 92 consumers pay their bills, the lender is in serious trouble. That is why retailers and other lenders expend so much effort to get it right.

There is not much more to underwriting than that. The complicated part occurs when trying to fit the maximum number of borrowers into the continuum of rates between five and 18 percent while keeping defaults to a minimum. Whoever does the best job of fitting borrowers to a particular interest rate attracts the most customers because they can offer the lowest rate and manage their defaults so that they still make money. Anything that enhances this process has obvious consumer benefits. Since 1996, the seven preemptions of the FCRA have enabled retailers and other lenders, at a national level, to take advantage of technological advances to serve their customers while greatly refining their ability to fit the right borrower into the right rate.

In effect, the FCRA and the 1996 amendments have created an interstate credit superhighway that has done an outstanding job of delivering an unprecedented volume of credit more cheaply and quickly to more people at all income levels. Is the system perfect? No, there are bumps, potholes and accidents along the highway, but very few overall, and especially so given the magnitude of the system and the speed at which it operates. It seems to us that the policy question today is how much do we want to impede credit traffic flow and increase costs for highway users in hopes of further reducing the number of accidents and bumps. We have reviewed the provisions of H.R. 2622 with this in mind, along with the criteria suggested by Assistant Treasury Secretary Abernathy that any amendments to the FCRA enhance both personal data security and access to and availability of credit. Below, please find our comments on the provisions of the legislation.

H.R. 2622

The National Retail Federation applauds the inclusion in H.R. 2622 of the critically important amendment that makes permanent the national uniform standards under the Fair Credit Reporting Act. The bill also includes a number of provisions to address specific scenarios that could involve identity theft. For example, the bill imposes new obligations in connection with certain address change requests, fraud alerts, and address discrepancies. The NRF supports efforts to address these issues and looks forward to working with the Committee to functionally strengthen these provisions.

A common theme of our recommendations for these provisions centers on maintaining flexibility to address these potential identity theft scenarios so that methods can change rapidly to address changes in identity theft schemes. In particular, we are concerned that if the methods for addressing identity theft are rigidly specified in the bill, retailers and other financial institutions will be forced to devote resources to complying with these methods even if they become ineffective or if more efficient alternatives become available. To address these issues, we recommend that the bill retain its approach of specifying a particular method for addressing each of the potential identity theft scenarios, but also include new provisions that would enable credit grantors to develop reasonable alternatives with guidance from the federal banking agencies. In general, where appropriate, we would recommend the type of approach taken in Section 326 of the USA PATRIOT Act, which is designed to combat terrorism, certainly no less a crime than identity theft.

Some examples where the bill would benefit from this approach include provisions for the investigation of change of address and those governing contacting the consumer pursuant to a fraud alert. Retailers are particularly concerned that the provisions not inadvertently frustrate consumers' ability to use their existing accounts, or open up the opportunity for unscrupulous "credit clinics" to manipulate the system to the detriment of the millions of honest consumers. We have submitted suggestions to the Committee staff and look forward to working with the Committee on this very important issue.

Thank you for the opportunity to appear before you today. I would be happy to answer any questions.